U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 09 155 50742 Office: CALIFORNIA SERVICE CENTER Date: JAN 22 2010

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a youth minister. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualifying religious vocation or occupation for the two years immediately preceding the filing of the visa petition.

The petitioner submits a letter and additional documentation in support of the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States –
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issue presented on appeal is whether the petitioner established that the beneficiary had the requisite continuous experience in a religious vocation or occupation for the two years immediately preceding the filing of the visa petition.

The regulation at 8 C.F.R. § 204.5(m) provides that to be eligible for classification as a special immigrant religious worker, the alien must:

> (4) Have been working in one of the positions described in paragraph (m)(2) of this section, either abroad or in lawful immigration status in the United States, and after the age of 14 years continuously for at least the two-year period immediately preceding the filing of the petition. The prior religious work need not correspond precisely to the type of work to be performed. A break in the continuity of the work during the preceding two years will not affect eligibility so long as:
>
> > (i) The alien was still employed as a religious worker;
> >
> > (ii) The break did not exceed two years; and
> >
> > (iii) The nature of the break was for further religious training or for sabbatical that did not involve unauthorized work in the United States. However, the alien must have been a member of the petitioner's denomination throughout the two years of qualifying employment.

The petitioner, therefore, must show that the beneficiary had been working in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The petition was filed on April 27, 2009. Accordingly, the petitioner must establish that the beneficiary had been continuously employed in qualifying religious work throughout the two-year period immediately preceding that date.

The regulation at 8 C.F.R. § 204.5(m)(11) provides:

> *Evidence relating to the alien's prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:
>
> > (i) Received salaried compensation, the petitioner must submit IRS documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
> >
> > (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
> >
> > (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution

> records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.
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> If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The petitioner indicated on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that the beneficiary had entered the United States on May 26, 2006 as a B-2 visitor for pleasure, and that her visa expired on November 25, 2006. The petitioner also provided a copy of a Form I-797A, Notice of Action, indicating that the petitioner petitioned for R-1, nonimmigrant religious worker status for the beneficiary on November 27, 2006 and that the petition was approved on November 8, 2007 for the period November 6, 2007 to November 25, 2009.

In a January 12, 2009 letter submitted in support of the petition, the petitioner stated that the beneficiary had "been teaching and performing religious duties [with] the church since 2006." The petitioner submitted no documentation to establish that the beneficiary worked in a lawful immigration status from April 27, 2007 to November 6, 2007, when her R-1 visa was approved. An alien who is present in the United States pursuant to a B-2 visa is not authorized to work in the United States. 8 C.F.R. § 214.1(e). The petitioner provided no documentation that the beneficiary was authorized to work in the United States prior to the approval of her R-1 visa. Any work performed in the United States in an unauthorized status interrupts the continuous work experience required by the regulation.

On appeal, the petitioner acknowledges that its petition for R-1 status for the beneficiary was pending from November 2006 to its approval in November 2007. The petitioner provides documentation of the beneficiary's 2008 taxes, but provides no documentary evidence to establish that the beneficiary was in a lawful immigration status prior to the approval of her R-1 visa.

Accordingly, because she was in an unlawful immigration status for seven months of the qualifying period, from April to November 2007, the record does not establish that the beneficiary has worked continuously in a qualifying religious occupation or vocation for two years immediately preceding the filing of the visa petition.

Beyond the decision of the director, the petitioner has not established its ability to compensate the beneficiary. On the Form I-360 petition, the petitioner stated that it would compensate the beneficiary at the rate of $20,000 annually plus an allowance for room and board. The petitioner provided copies of its monthly bank statements, which included copies of canceled checks, indicating that it paid the beneficiary $3,500 in August 2007, $1000 in February 2008, and $175 in April 2008. On appeal, the petitioner submits copies of its banking statements indicating that it paid the beneficiary $1,000 per month from March 2008 to February 2009, and in April and May 2009. Canceled checks also indicate that the petitioner paid the beneficiary an additional $404 in September 2008 and an additional $414 in April 2009. The petitioner provides on appeal a copy of the beneficiary's 2008 IRS Form 1040, indicating that she received $12,000 in nonemployee

compensation as a minister with the petitioning organization. Additionally, the petitioner submits copies of its unaudited financial statements for the periods December 2006 through December 2008.

The regulation at 8 C.F.R. § 204.5(m)(10) provides that the petitioner must submit:

> Evidence relating to compensation. Initial evidence must include verifiable evidence of how the petitioner intends to compensate the alien. Such compensation may include salaried or non-salaried compensation. This evidence may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. If IRS documentation, such as IRS Form W-2 or certified tax returns, is available, it must be provided. If IRS documentation is not available, an explanation for its absence must be provided, along with comparable, verifiable documentation.

The petitioner's bank statements and the beneficiary's income tax return do not indicate that the petitioner has compensated the beneficiary with a housing allowance or an annual salary of $20,000. The unaudited financial statements do not reflect that the petitioner had the necessary resources to compensate the beneficiary in the amount stated, and the petitioner provided no budget indicating that it had set money aside to compensate the beneficiary. Accordingly, the petitioner has not established that it has the ability to compensate the beneficiary at the proffered rate.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.